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March 28, 2001

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

RE: Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Massachusetts, Docket No. 01-9

Dear Ms. Salas:

In response to R. Lien's request, the attached information was provided. Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 01-106.

Sincerely,

Dee May

cc: E. Einhorn
R. Lien
K. Farroba
S. Pie

Bruce P. Beausejour
Vice President and General Counsel – New England

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March 15, 2001

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: Verizon Massachusetts Tariff Filing Of January 12, 2001

Dear Ms. Cottrell:

Enclosed for filing, please find a copy of the Opposition of Verizon Massachusetts to the Motion of AT&T Communications of New England, Inc. and Covad Communications Company for Reconsideration and for Extension of Judicial Appeal Period.

Thank you for your assistance in this matter.

Sincerely,

Bruce P. Beausejour

Enclosure

cc: Tina W. Chin, Esquire, Hearing Officer (2)
Michael Isenberg, Esquire, Director – Telecommunications Division
Attached D.T.E. 98-57 Service List

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATION AND ENERGY

Verizon Massachusetts Tariff Filing of January 12, 2001	)

OPPOSITION OF VERIZON MASSACHUSETTS

Verizon Massachusetts ("Verizon MA") files this opposition to the Motion of AT&T Communications of New England, Inc. ("AT&T") and Covad Communications Company ("Covad") (hereinafter collectively referred to as "Movants") for Reconsideration and for Extension of the Judicial Appeal Period filed with the Commission on March 7, 2001. Movants seek reconsideration of the Department's decision not to suspend revisions to D.T.E. Tariff 17 proposed by Verizon MA on January 12, 2001. As discussed below, the Department should deny the motion. Whether the Department chooses to suspend and investigate proposed tariff changes is within its discretion, and Movants have no grounds for reconsideration (or appeal) when the Department does not suspend a tariff. Movants have also failed to establish that good cause exists for an extension of the judicial appeal period. Accordingly, the request for such an extension should be denied.

I. PROCEDURAL BACKGROUND

On January 12, 2001, Verizon MA filed proposed revisions to D.T.E. Tariff 17 regarding the application of DC power rates, the rates for Meet Point A and Meet Point C

interconnection arrangements, and the methodology used to calculate the Unbundled TC Reciprocal Compensation rate. With respect to DC power, Verizon MA proposed to change the manner in which it charges from a per fused amp basis, as required under the Department-approved D.T.E. Tariff 17 at that time, to a per load amp basis. Verizon MA also proposed language regarding random inspections to verify the actual power load drawn by physical collocation arrangements. *See* Verizon MA's January 12, 2001 Tariff Filing.

On January 24, 2001, the Department issued a Hearing Officer Memorandum requesting comments on the January 12 Tariff Filing, and an explanation from Verizon MA regarding its reasons for the proposed revisions. *See Hearing Officer Memorandum* dated January 12, 2001. As requested, Verizon MA filed a letter on February 1st explaining its reasons for filing the proposed revisions. Verizon MA pointed out that the DC power changes were "intended to address an issue that was raised in Verizon MA's initial 271 filing with the FCC regarding the application of power rates." *See Letter from Bruce Beausejour to Mary L. Cottrell Re: Verizon Massachusetts Tariff Filing of January 12, 2001* dated February 1, 2001. Verizon MA also noted, as it had in its January 12th Tariff Filing, that the proposed changes to the DC power provisions would result in significant cost savings to CLECs who collocate in Massachusetts.

Movants filed their comments on February 1st in which they stated their objections to Sections 2.6.3.C (relating to DC power charges) and 2.3.5.E. and 2.3.5.F (relating to inspections and audits) and requested *inter alia* that the Department suspend and investigate the proposed revisions. *See* Petition of AT&T Communications of New England, Inc. and Covad Communications Company to Investigate Certain Provisions of

January 12, 2001 Tariff filing and Suspend and Investigate Certain Other Provisions, D.T.E. 98-57 (February 2001) ("Suspension Petition"). The Department determined not to suspend the effective date of the tariff changes and, on February 15, 2001, approved the proposed tariff revisions.[1]

On February 22, 2001, AT&T and Covad filed a complaint with the Department alleging that Verizon MA was charging for DC power in violation of D.T.E. Tariff 17. *See* Complaint of Covad Communications and AT&T Communications of New England, Inc. Regarding Collocation Power Charges Assessed By Verizon New England, Inc. Many of the allegations contained in Movants' Complaint were identical to those raised in their Suspension Petition. Movants followed-up their Complaint with this motion.

II. ARGUMENT

Movants make three arguments in support of their motion for reconsideration. They argue that: (1) the Department's approval of the tariff revisions was procedurally improper because it was made "without evidence"; (2) the Department's approval of Verizon MA's proposed inspection and penalty provisions was procedurally improper because the Department did not conduct a review and did not provide a statement of reasons, including a determination of each issue of fact or law necessary to make its decision; and (3) the Department provided inadequate notice and opportunity for parties to present evidence and argument before rendering final decision. Movants' claims are without merit and must be rejected.

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[1] As a technical matter, the Department was not required to take this step because by operation of law the tariff revisions took effect on February 11, 2001 - 30 days after the filing date. *See* G.L. c. 159, § 19 (proposed tariffs become effective by law unless suspended within the 30-day period).

A. The Decision Whether To Suspend a Tariff Is Within the Sole Discretion of the Department

The Movants provide pages of argument about the burden of proof, the need for the Department to act on a record, the need for a decision to be based on a statement of reasons, *etc.* (Movants' Motion at 4-11). The authorities cited by Movants are completely irrelevant to this matter. All of the decisions upon which the Movants rely involved *adjudicatory* proceedings in which the Department opened an investigation, thereby triggering the procedural requirements of G.L. c. 30A. The filing of a proposed tariff does not, however, require that the Department commence an adjudicatory proceeding, and the decision as to whether the Department will suspend proposed tariffs for investigation is within the Department's discretion, which it may exercise without instituting an adjudicatory proceeding.[2] Thus, the procedural requirements associated with adjudications, which the Movants' assert the Department was obligated to follow, were never triggered here.

Contrary to the Movants' claim, the mere fact that a commenter challenges a tariff change does not entitle it to a suspension or require that the Department open an adjudicatory proceeding. The Department has broad discretion in allowing, suspending and investigating proposed tariff changes. In *New England Telephone and Telegraph Company*, D.P.U. 97-18-A (1997), reconsideration was sought of a Department decision

[2] Department decisions on whether to suspend a tariff filing is always discretionary. A hearing is required only if a tariff filing "represent[s] a general increase in rates...". G.L. c. 159, § 20. Therefore, in this case, which is not a "general increase in rates," there is no statutory requirement for either suspension or investigation.

to permit a tariff change to go into effect.[3] The Department rejected the request for reconsideration, finding that decisions on suspension were discretionary in nature and that there was no standing to challenge such decisions:

> ...under G.L. c. 159, §§ 19 and 20, the Department has broad discretion to determine the structure of investigations of tariff filings by common carriers, including whether to suspend such filings or allow them to go into effect without suspension.... In this case, the Department vacated the suspensions without establishing an adjudication. Thus, [the movants for reconsideration] did not have "party" status and any associated procedural rights. Accordingly, we find that neither [of the movants] have legal standing to seek reconsideration.

Id. at 5. *See also Boston Gas Co. v. Department of Public Utilities,* 368 Mass. 51, 53-57 (1975).[4] In D.T.E. 97-18-A, the Department also addressed the issues of whether the Department was required to hold hearings, and the due-process and procedural rights of those seeking suspension and adjudication:

> After reviewing comments filed by interested persons, the Department determined that it would not be prudent to conduct a resource-intensive adjudication.... Moreover, because this was...not a request for a general rate increase, the Department finds that it was not required to conduct evidentiary or public hearings. See G.L. c. 159, §§ 19 and 20.
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> ****

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[3] In fact, the Department had initially suspended the tariff filing, but subsequently vacated the suspension order. *Id.* at 1.

[4] In *Boston Gas*, the Supreme Judicial Court reviewed the similar suspension powers of the Department for regulated gas and electric companies set forth in G.L. c. 164, § 94. In that decision, the Court reviewed an appeal from a company whose interim tariffs were suspended by the Department without hearing or a statement of reasons. The Court ruled that: "No hearing is required before the entry of any suspension order. The [D]epartment is not obliged to make any findings of fact or to issue any statement of its reasons for suspending rates.... The Legislature has thus granted the [D]epartment discretion to suspend rates without imposing any obligation on the [D]epartment to create a record which could serve as a basis for judicial review. We conclude that the Legislature did not intend that this court have statutory jurisdiction to review the [D]epartment's discretionary decision to suspend filed rates." *Id.* at 54.

> Under certain circumstances, particularly with a request for a general increase in rates, the Department is required to investigate and hold hearings on such a tariff filing pursuant to §§ 19 and 20. However, it is the nature of the tariff filing (e.g., a general rate increase) or the Department's determination to conduct an adjudicatory proceeding, that confers certain procedural rights on parties to that proceeding, including (in most cases) the right to a hearing.

Id., at 5-6.

Thus, only if the Department exercises its discretion to suspend and investigate a proposed tariff do any procedural rights accrue to putative parties. In short, the Movants had no right under Massachusetts law to an adjudicatory proceeding and have no standing to seek reconsideration or appeal of the Department's decision to permit tariffs to go into effect without suspension. Therefore, Movants' motion for reconsideration of the Department's decision not to suspend Verizon MA's tariff is fatally flawed in that there is no proceeding from which reconsideration or appeal is permissible.

B. The Department's Decision Not to Suspend Verizon MA's Proposed Tariff Revisions Was Consistent With Due Process

Movants' reliance on the Department's disposition of a motion for reconsideration in *Petition of CTC Communications Corp.*, D.T.E. 98-18-A (July 24, 1998) ("*CTC*") to support its argument that the Department provided inadequate notice and opportunity for parties to present evidence and argument before rendering its final decision is misplaced. The facts of that case were completely different from those at issue here. In *CTC*, Verizon MA filed a motion for reconsideration on grounds that its due process rights were violated. The cause of this violation was not the fact that the Department failed to convene an evidentiary hearing, as Movants argue, but because the Hearing Officer at a

procedural conference led Verizon MA to believe that the Department intended to act only with respect to the scope of the proceeding rather than act on the merits of the pending matter. As a result, Verizon MA filed comments that addressed only the scope of the proceeding rather than the underlying merits. It was the Department's failure to convene hearings in this factual circumstance and the resulting ambiguity which Verizon MA argued and the Department ultimately concluded was a violation of Verizon MA's due process rights. *See id.* at 9-10.

In sharp contrast to what transpired in *CTC*, nothing in the Department's January 24, 2001 Hearing Officer Memorandum suggested that the Department intended to hold further evidentiary proceedings with respect to the tariff changes proposed by Verizon MA. The Movants have no constitutional or statutory right to a hearing or adjudicatory process regarding the suspension of proposed tariffs, and therefore, due process rights are not implicated in the Department's exercise of its discretionary decision on whether to suspend rates or conduct an investigation. In these circumstances, Movants have no claim that their due process rights were denied. Accordingly, Movants' motion for reconsideration should be denied.

C. Movants' Motion Mischaracterizes the Changes to D.T.E. Tariff 17 Proposed by Verizon MA

In their effort to create the impression that Verizon MA's proposed tariff changes dramatically and negatively affect the level of DC power charges under D.T.E. Tariff 17, Movants have misconstrued the changes proposed by Verizon MA in its January 12, 2001 Tariff Filing and their effect on the application of the previously approved DC power charges. For example, Movants allege that Verizon MA proposed to modify the manner

in which its DC power rates are applied "with the effect that Verizon may charge twice the amount (or more) permitted by the language of the previous tariff." *See* Motion at 6. This is not correct.

Movants' assertion is based on their unsupported and erroneous view that, prior to the proposed changes, D.T.E. Tariff 17 did not authorize Verizon MA charge CLECs for DC power on a per fused amp, per feed basis. Movants make similarly flawed allegations in their Complaint. As discussed in Verizon MA's Answer to that Complaint, Verizon MA charged CLECs for DC power on a fused amp, per feed basis in accordance with the express terms of D.T.E. Tariff 17. Movants' arguments to the contrary are completely without merit. A copy of Verizon MA's Answer is attached as Exhibit 1 and the substance of Verizon MA's arguments are incorporated as if fully set forth herein.

The "changes" proposed by Verizon MA were clearly explained in the materials accompanying the January 12, 2001 Tariff Filing and in the February 1, 2001 letter filed by Verizon MA at the Department's request. Specifically, the changes provided that DC power charges apply only to the number of load amps requested by the CLEC, rather than the number of fused amps made available to the CLEC's collocation arrangement. Since D.T.E. Tariff 17 clearly provided that DC power charges would be assessed to CLECs on a per fused amp, per feed basis, based on the total amount of power provisioned by Verizon MA to the CLEC, Verizon MA's proposed change from a "fused amp" to a "load amp" basis substantially *decreases* in the DC power charges assessed to CLECs under D.T.E. Tariff 17. *See Letter from Bruce Beausejour to Mary L. Cottrell Re: Verizon Massachusetts Tariff Filing of January 12, 2001* dated February 1, 2001.

D. Movants Have Failed to Demonstrate "Good Cause" Exists to Stay the Judicial Appeal Period

G.L. c. 25, § 5 provides in pertinent part, that an aggrieved party in interest may file an appeal of a Department final order no later than 20 days after service of the order or within such further time as the Commission may allow upon request filed prior to the expiration of the 20 days after the date of service of said decision or ruling. G.L. c. 25, § 5. The Movants' request for an extension of the appeal period must be denied for two reasons. First, as described above, the Department did not institute a proceeding to investigate the proposed tariff changes, and therefore, there were no "parties" to an adjudication of the tariff changes. Movants simply have no standing to file an appeal under G.L. c. 25, § 5.

Second, the 20 day appeal deadline indicates a clear intention on the part of the Legislature and the Department to ensure that the decision of an aggrieved party to appeal a final order of the Department must be made expeditiously. *Id.* Swift judicial review benefits both the appealing party and other parties, and serves the public interest by promoting the finality of Department orders. *Ruth C. Nunnally d/b/a L&R Enterprise,* D.P.U. 92-34-A, at 4 (1993). The Department's procedural rules provide that extensions to the judicial appeal period may be granted upon a showing of good cause. 220 C.M.R. § 1.11(11). Although Movants have no right to an appeal, even if they did, their arguments are devoid of merit and fail to establish "good cause" that would merit an extension of the judicial appeal period. Accordingly, Movants Department should deny Movants' request.

IV. CONCLUSION

For all of the foregoing reasons, Movants' Motion should be denied.

Respectfully submitted,

Verizon New England Inc.,
d/b/a Verizon Massachusetts

By its attorneys,

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(617) 743-2445

Dated: March 15, 2001

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Complaint of Covad Communications Company And AT&T Communications of New England, Inc. Regarding Collocation Power Charges Assessed By Verizon New England, Inc.	)))))

ANSWER OF VERIZON MASSACHUSETTS

Pursuant to 220 C.M.R. § 45.05(1), Verizon Massachusetts ("Verizon MA") files this Answer to the Complaint of Covad Communications Company ("Covad") and AT&T Communications of New England, Inc. and its affiliated companies (collectively referred to as "AT&T") filed with the Department on February 22, 2001. Complainants allege that Verizon MA has been charging competitive local exchange carriers ("CLECs") for DC power provided to collocation arrangements in violation of D.T.E. Tariff 17. Specifically, they claim that the tariff does not permit Verizon MA to charge CLECs on a per amp basis for the number of fused amps Verizon MA makes available on each power feed a CLEC orders and that Verizon MA's assessment of DC power charges on this basis from the date the Department approved the tariff violates the "filed rate doctrine." As discussed below, the Complaint is fatally flawed and should be dismissed without further proceedings.

BACKGROUND

In an effort to make a case where none exists, Complainants conveniently ignore the plain, Department-approved language of D.T.E. Tariff 17, which until a recent amendment, provided that DC power would be assessed per *fused* amp provisioned to the

CLEC collocation arrangement *on a per amp, per feed basis*. *See* D.T.E. Tariff 17, Part E, Section 2.2.1.B, Part E. Section 2.6.3.C., Part M, Section 5.2.3.[1] Copies of the tariff provisions are attached as Exhibit A of this Answer. This language is not new but has been in D.T.E. Tariff No. 17 since it was filed in April 1999, in D.T.E. 98-57. The Department approved the tariff after extensive investigation in which AT&T, Covad, and other CLECs participated and had the opportunity to raise *any* issues regarding that tariff – including the application of the DC power charges. Neither of the Complainants and no other party to the proceeding challenged Verizon MA's tariff provisions that clearly state that DC power rates apply on a per fused amp, per feed basis.

In suggesting that there is an ambiguity in the tariff, AT&T and Covad attempt to convey the impression that they were confused about the application of the DC power charges under the tariff. They contend that they only became aware of the issue in connection with discussions occurring in other jurisdictions at the end of 2000. Complaint at ¶ 2. AT&T and Covad's claims are simply not correct. The Complainants were well aware of how Verizon MA would apply its DC power charges under D.T.E. Tariff 17. Not only is the tariff clear concerning the application of the rates, but before evidentiary hearings even began in D.T.E. 98-57, Verizon MA witnesses testified concerning the manner in which Verizon MA applied DC power charges and Verizon MA provided CLECs with information regarding the charges.

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[1] On February 11, 2001, a revision to Verizon MA's D.T.E. Tariff 17 became effective that changed the application of the DC power charges from "fused amps" provisioned to the number of load amps specified by the CLEC. This change in the tariff will result in a significant reduction in the DC power charges incurred by CLECs. To avoid confusion in this Answer, unless otherwise specified, references and discussions regarding Verizon MA's practices regarding the application of DC power and D.T.E. Tariff 17, refer to its practices and the provisions of the tariff prior to February 11, 2001.

In D.T.E. 98-57, a Covad witness erroneously asserted that Verizon MA was charging CLECs for a minimum of "60 amps per amp per feed" (sic) in testimony filed in July of 1999. *See Direct Testimony of Michael Moscaritolo* dated July 26, 1999, at 19. In prefiled rebuttal testimony, Verizon MA explained that the proposed tariff did not contain a minimum requirement as suggested by the Covad witness. The Verizon MA witness proceeded to explain that under the proposed tariff DC power rates were applied on a per fused amp, per feed basis based on the level of power specified by the CLEC. *Rebuttal Testimony of Amy Stern on behalf of Bell Atlantic-Massachusetts* dated August 16, 1999, at 46. As Verizon MA's witness pointed out:

> The Covad applications specified 40 DRAIN amps of power feed. Proper engineering for DC power requires 60 fused amps to support 40 amps of drain. The DC power feeds that are fused for 60 amps are allocated and dedicated to Covad and require [Verizon] to engineer the power distribution plant accordingly. The power rates are based on fused amps as well, not drained amps. Covad may specify their power requirements in as little as single amp increments and if they require less than 60 fused amps, they should order less, but [Verizon] should not be penalized for providing the power requirements consistent with the Covad application. *Id.*

In addition to the plain language of D.T.E. Tariff 17, the CLEC Handbook, available on Verizon MA's website, contained a description of the provisioning of DC power and again pointed out that charges for DC power are assessed on a per fused amp, per feed basis. *See CLEC Handbook, Volume III, Section 4.2 (Power to the Collocation Node).*

The Department and CLECs also questioned Verizon MA's collocation witness at the November 15, 1999, Technical Session in D.T.E. 99-271 concerning the issues raised here. *See* D.T.E. 99-271, Tr. 1106-11. The Department noted that some CLECs had

expressed concern about Verizon MA's application of DC power charges on a per fused amp, per feed basis and asked the Verizon MA witness to explain the company's position. The witness testified that "[w]e're charging for the amount fused, and we're charging for both an A and a B feed." Tr. 1107. The testimony explains precisely how the DC power charges set forth in D.T.E. Tariff 17, then being reviewed by the Department in D.T.E. 98-57, applied. Once again, Verizon MA explained the application of the charges *before* the evidentiary hearings occurred in that proceeding, and despite this, no CLEC raised any question during the case about the charges or the tariff provisions relating to power.

For AT&T and Covad to now contend that they only learned of the DC charging issue in late 2000 is belied by the facts.[2] They were parties to Department proceedings in which the application of the charges under the tariff were clearly explained. Indeed, those proceedings occurred over a year before AT&T and Covad state in their Complaint that they first became aware of the power "issue." For Complainants to now contend that the tariff is ambiguous is also incredible – the tariff specifies in unambiguous terms that DC power charges apply on a per fused amp, per feed basis, and AT&T and Covad received multiple explanations concerning the application of the charges while the tariff was being reviewed before Department approval. The Complainant's claims are nothing more than a post hoc scheme to avoid charges that are clearly specified in a Department-approved tariff.

Rather than addressing the issue in the proper forum – the tariff investigation in D.T.E. 98-57 – Covad waited until Verizon MA's 271 proceeding when Covad launched

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[2] The Complainants also could not be confused because Verizon MA charges for DC power on the same basis under its FCC Expanded Interconnection Tariff for collocation arrangements provided to AT&T and Covad. Moreover, as discussed below, the issue of charging on a fused basis was raised in the

a collateral attack on the power charges in its comments filed with the FCC. *See, e.g., In the Matter of Application by Verizon New England Inc., et al. for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Massachusetts, Comments of Covad Communications Company,* CC Docket No. 00-176 (October 16, 2000), at 43-47. In response to Covad's claims before the FCC, the Department reaffirmed that Verizon MA's DC power rates and the application of the rates was reasonable and rejected the issues now raised by Complainants (*i.e.*, alleged overcharging for DC power). *See In the Matter of Application by Verizon New England Inc., et al. for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Massachusetts, Reply Comments,* CC Docket No. 01-9 (February 28, 2001, at 2-3); *In the Matter of Application by Verizon New England Inc., et al. for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Massachusetts, Evaluation of the Massachusetts Department of Telecommunications and Energy (Vol. I of II),* CC Docket No. 00-176 (October 16, 2000), at 39-41.

In short, AT&T and Covad's Complaint attempts to create confusion about the terms of Verizon MA's tariff where none exists to evade charges that have been lawfully imposed under an approved tariff. The Department should reject their claims.

RESPONSE TO COMPLAINANT'S ALLEGATIONS

In response to the specific allegations contained in the Complaint, Verizon MA states as follows.

Consolidated Arbitrations when the DC power rates were set.

1. Verizon MA does not dispute that Complainants initiated this action to secure a declaration by the Department that Verizon MA allegedly failed to charge its filed rate for DC power provided to collocating carriers under D.T.E. Tariff 17. Verizon MA denies that Complainants are entitled to such relief. Until the Department's February 15, 2001, approval of revisions to D.T.E. Tariff 17 proposed by Verizon MA, the tariff expressly provided that Verizon MA would assess its DC power charges to CLECs "per fused amp" provided and based on the "total power provisioned to the [CLEC] multiplexing node...." *See* D.T.E. Tariff 17, Part E, Section 2.2.1.B, Part E. Section 2.6.3.C., Part M, Section 5.2.3. In addition, the tariff clearly states that this charge applies to each power feed Verizon MA provides to a CLEC in connection with its collocation arrangement. *See id.* at Part E, Section 2.2.1.B and Part M, Section 5.2.3. Verizon MA denies the remaining allegations contained in this paragraph.

2. Verizon MA denies the allegations contained in the first sentence of this paragraph to the extent that it suggests that Verizon MA overcharged CLECs for DC power or that Verizon has overcharged CLECs for DC power in other jurisdictions. Verizon MA also denies that AT&T and Covad were not aware that Verizon MA intended to apply its DC power charges on a per fused amp basis for each feed requested by a CLEC until this matter was raised as an "issue" in the former Bell Atlantic-South region. Verizon MA does not dispute that AT&T entered into an agreement with Verizon in states that were formerly part of the Bell Atlantic-South region that addressed a number of issues, including the application of collocation power charges. Verizon MA admits the allegations contained in the third sentence of this paragraph. Verizon MA does not dispute that Covad and AT&T filed a complaint regarding DC power in New York;

however, that complaint was filed on November 16, 2000, and not January 17, 2001. Verizon MA denies that Covad and AT&T had any basis for filing such a complaint and states that the claims asserted by the Complainants in New York are similarly without merit.

3. Verizon MA admits that on January 12, 2001, it filed a proposed revision to D.T.E. Tariff 17 regarding the application of DC power rates, but denies that it did so in anticipation of the filing of a complaint as alleged by the Complainants. To the contrary, as noted in Verizon MA's letter to the Department dated February 1, 2001, this change "was intended to address an issue that was raised in Verizon MA's initial 271 filing with the FCC regarding the application of power rates." *See Letter from Bruce P. Beausejour to Mary L. Cottrell Re: Verizon Massachusetts Tariff Filing of January 12, 2001* dated February 1, 2001. Specifically, Verizon MA proposed to change the manner in which it charged for DC power under D.T.E. Tariff 17 from a per fused amp basis, as required under the Department-approved D.T.E. Tariff 17 at that time, to a per load amp requested basis. Verizon MA also proposed language regarding random inspections to verify the actual power load drawn by physical collocation arrangements. *See* Verizon MA's January 12, 2001 Tariff Filing. Verizon MA denies the remaining allegations contained in this paragraph.

4. Verizon MA admits that the proposed new tariff language applies to charges for collocation incurred after February 11, 2001, but denies the allegations contained in the first sentence of this paragraph to the extent it implies that there is any past or present "issues" regarding DC power which the Department need address. Verizon MA denies the allegations contained in the second sentence of this paragraph to

the extent it suggests that Verizon MA improperly and/or unlawfully forced Complainants or other CLECs to pay for collocation power in Massachusetts. Verizon MA denies the allegations contained in the third sentence of this paragraph.

5. Verizon MA denies that Complainants are certificated competitive local exchange carriers in Massachusetts because the Department does not certify carriers who operate in the Commonwealth. Carriers operate in the Massachusetts without Department certification in accordance with the Department's ruling in *Re Regulatory Treatment of Telecommunications Common Carriers,* D.P.U. 93-98 (May 11, 1994) (Department eliminates certification requirements, requiring instead that carriers register with the Department).

6. Verizon MA admits the allegations contained in this paragraph.

7. Verizon MA admits that Part E, Sections 1, 2, and 9 of D.T.E. Tariff 17 governs collocations arrangements in Massachusetts, but denies that the tariff provisions cited by Complainants are all that are relevant for collocation. In addition to the cited sections, Part M, Section 5 is also applicable to CLEC collocation arrangements in Massachusetts.

8. Verizon MA admits that CLECs order DC power to operate their collocation equipment under D.T.E. Tariff 17. Verizon MA lacks sufficient information to form a belief as to the truth or falsity of Complainants' allegation that they typically order DC power based on the highest amount of amperage that their collocated equipment may drain. Currently, if a CLEC requests 40 load amps of DC power, Verizon MA will provide a feed fused at (on average) approximately 60 amps – all of which the CLEC has the ability to draw. Carriers may specify (and AT&T does) the precise number of feeds

and fused amounts to be provided to the collocation arrangement. Verizon MA provides DC power in accordance with the CLECs specifications and established engineering practices.

9. Verizon MA disagrees that CLECs understand the power ordering process. Verizon MA believes that Complainants may have incorrectly ordered power and now want to blame Verizon MA. When ordering DC power, CLECs in Massachusetts have an opportunity to review their applications with Verizon MA to understand how all rates would be applied to their collocation arrangements. Some CLECs have revised their original power requirements after these discussions.

Contrary to Complainants' assertions, CLECs do not typically identify the maximum amount of power that their equipment can draw. Instead, as noted above, the CLECs order the amount of DC power they believe they will need presently and over time. Verizon MA admits that power drainage is measured in amps, but denies that CLECs order from Verizon on a "drained amp" basis. While CLECs identify anticipated drained amps on Verizon MA's Collocation Application, along with other information, the Collocation Application does not determine the appropriateness of Verizon MA's DC power charges – the applicable tariff (D.T.E. Tariff 17) does. Until the recent changes to D.T.E. Tariff 17 on February 11, 2001, the tariff expressly provided that DC power would be assessed on a "per fused amp" basis. *See* MA D.T.E. Tariff 17, Part E, Section 2.2.1.B, Part E. Section 2.6.3.C., Part M, Section 5.2.3.

10. Verizon MA admits that many CLECs request two "feeds," which are the electric conduits that carry the DC power to the CLEC equipment, but denies that CLECs use one of these feeds solely for backup or redundancy purposes. CLECs are; in fact, drawing power on all

of the power feeds to their collocation arrangements. During the first week of February 2001, Verizon MA tested the power feeds serving 298 collocation arrangements in 32 Massachusetts central offices. This sampling included the collocation arrangements of 32 different CLECs. The tests were conducted at Verizon MA's Battery Distribution Bays ("BDFB") or Power Distribution Bays ("PDB") where the CLEC power feeds are fused. Of these 1,022 power feeds, 994 or 97.26 percent were drawing power on both feeds at the time of the test. In the isolated cases where the power feeds were not drawing power, Verizon MA did not audit the CLEC equipment to identify if the power feeds were actually connected to the CLECs' equipment or if the CLECs' equipment had any trouble condition. It is evident that CLECs are using both the A and B feeds to power their equipment; there is power being drawn on both the A and the B feeds; and CLECs do not use the B feed as merely a redundant backup feed. It is, therefore, appropriate for Verizon MA to charge CLECs for collocation power based on the amount of power and the number of power feeds requested by the CLECs on their collocation applications, as D.T.E. Tariff 17 required.

Verizon MA lacks sufficient knowledge to form a belief as to the truth or falsity of Complainants' allegation that each feed alone is adequate to carry the maximum power of the collocation equipment that the CLEC actually deploys. Verizon MA denies that it "requires" CLECs to order a minimum of two feeds or subfeeds. While Verizon MA's Collocation identifies A&B feeds as an "A&B Feed Pair", this reflects engineering practice and the historic industry preference for at least two feeds to be used in providing DC power for collocated equipment. CLECs can and do order whatever number of feeds they believe are necessary to operate the equipment they place in their collocation arrangements. The CLECs determine how to deploy these feeds within their collocation arrangements and how to provide these feeds to

multiple pieces of equipment.

11. Verizon MA does not dispute that the example described in this paragraph is one possible manner in which a CLEC may choose to power its collocated equipment. Further answering, Verizon states that this benefit only exists where CLECs have accurately identified the equipment to be collocated and ordered sufficient DC power, including A&B feeds with sufficient amperage. Verizon MA lacks sufficient information to state a belief as to whether, under ordinary circumstances, the two feeds each carry only half the actual power used. CLECs have the ability to draw on *all* of the amps fused (per feed), and therefore, Verizon MA charges for these amps. This policy is reasonable because Verizon cannot monitor DC power on each of the thousands of power feeds extending from its BDFB to the collocated equipment served by those power feeds. Therefore, at any time, the actual power load or drain of a particular CLEC's equipment may exceed (either accidentally or intentionally) the number of load amps the CLEC requested from Verizon MA. In fact, a number of CLECs have blown fuses within their collocation arrangements.

12. Verizon MA admits the allegations contained in this paragraph.

13. Verizon MA admits that it installs a fuse on DC power feeds consistent with established engineering standards but denies that it makes fusing available at a minimum of 10 amp increments. Verizon MA admits that established engineering principles call for fusing at some multiple of the expected drain. All other allegations are denied.

14. Verizon MA fuses power at 1.25 to 1.50 times the load amps per feed requested by the CLEC, and this method is consistent with established industry practice.

Complainants point out in the second sentence of this paragraph that "[I]f fuses were set at the level of the actual anticipated power drain, they would constantly 'pop,' disrupting the circuit continually." Verizon MA does not dispute this allegation. These "pops" occur due to a surge in demand. Verizon MA also does not dispute the allegations in the third sentence of this paragraph that "it would make little sense to set the capacity of the fuse at the same level as the power *regularly to be drawn*" (emphasis added) and that "fuses are never selected at the expected drain rate." It is therefore reasonable to fuse at a higher amp level than the equipment is rated. Accordingly, Verizon MA does not dispute the allegations contained in the third and fourth sentences of this paragraph. Verizon MA denies Complainants' allegation that "the "size of the fuse does not increase the amount of power the equipment can draw." As noted above, if the equipment never drew more than the load amps requested by the CLEC, there would be no danger of the "pops" described by the Complainants. The provision of fusing at higher fuse levels means that more power is available for use without fear of the "pops" discussed above.

15. Verizon MA admits that if a CLEC orders 50 load amps of power, Verizon MA may install an 80 amp fuse depending on the power source, but denies that doing so is necessarily "typical." In response to the second sentence of this paragraph, Verizon MA denies that where Verizon MA installs such a fuse that this fused amount is more than the CLEC ordered, or than Verizon MA is obligated to provide. Complainants do not dispute that Verizon MA should fuse amps at higher than the load amp requested (per feed requested) – they simply do not want to pay for it. Verizon MA also denies Complainants' allegation that this amount is more than the CLECs' equipment actually can or will be able to use.

16. Verizon MA admits that until the tariff revisions that become effective on February 11, 2001, Verizon MA charged CLECs requesting DC power based on the number of amps fused and the number of feeds requested, as required by the tariff. Verizon MA denies the allegations contained in the first sentence of this paragraph to the extent they suggest that Verizon MA's collocation charges were not assessed for collocation power requested by a collocating CLEC or were imposed without regard to how much power a collocating CLEC could actually use. In response to the remaining allegations in this paragraph, Verizon MA incorporates its response to paragraph 15 as if fully set forth herein.

17. Verizon MA denies the allegations contained in this paragraph.

18. Verizon MA admits the allegations contained in this paragraph.

19. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions provides that DC power charges are assessed on a per amp fused, per feed basis.

20. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions clearly specifies that DC power charges are assessed on a per amp fused, per feed basis.

21. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions clearly specifies that DC power charges are assessed on a per amp fused, per feed basis.

22. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions clearly specifies that DC power charges are assessed on a per amp fused, per feed basis.

23. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions clearly specifies that DC power charges are assessed on a per amp fused, per feed basis.

24. Verizon MA denies the allegations contained in this paragraph.

25. Verizon MA denies the allegations contained in this paragraph. "Total power provisioned" as used in D.T.E. Tariff 17 refers to the total power made available by Verizon MA as requested by a CLEC at all DC power feeds provided by Verizon MA to a CLEC's collocation arrangement.

26. Verizon MA denies the allegations contained in this paragraph.

27. Verizon MA denies the allegations contained in this paragraph. Further answering, Verizon MA states that the referenced tariff provisions are not ambiguous and that the Complainants had ample opportunity to review the tariff language. Furthermore, Complainants were well aware of Verizon MA's assessment and application of DC power charges for collocation arrangements in Massachusetts, which the tariff language reflects. Thus, Complainants cannot credibly contend that there was any ambiguity with respect to the application of Verizon MA's tariffed DC power charges associated with collocation in Massachusetts.

28. Verizon MA denies the allegations contained in this paragraph.

29. Verizon MA admits the allegations contained in this paragraph to the extent "supplied" means power provisioned by Verizon MA and available for the CLECs use in connection with its collocation arrangement. In its *Phase 4-G Order* the Department found reasonable the "*cost* per amp" of DC power identified in Verizon MA's collocation cost study. The application of the rates is clearly set forth in Part E,

Section 2.6 of Verizon Tariff DTE No. 17 ("Application of Rates and Charges") that expressly provides that DC power provided to a CLEC collocation node will be "assessed per fused amp provided" and "will be based on the total power provisioned to the multiplexing node...." Part E, Section 2.6.3.C.

30. The Department's *Phase 4-G Order* speaks for itself, and Verizon MA denies that it supports the allegations advanced by Complainants.

31. Verizon MA denies the allegations set forth in this paragraph.

32. The Department's findings in the *Phase 4-G Order* speak for themselves, and Verizon MA denies that they support Complainants allegations.

33. Verizon MA denies the allegations contained in this paragraph. When Verizon MA filed its cost study addressing DC power, AT&T and other CLECs were well aware that Verizon MA would assess DC Power on a per fused amp, per feed basis. Indeed, MCI's expert witness in the *Consolidated Arbitrations* docket, Rick Bissell, specifically raised on the record the fact that Verizon MA intended to charge on a "fused amp basis." Mr. Bissell testified:

> The most significant area in this cost study...is the cost of power, as explained by Mr. Lathrop, can run into 80, 90,000 dollars per amp for a CLEC. In addition to that, 30 percent of that 80 or 90,000 is simply because the cost is based on a fuse amp, as opposed to how much power you're using. So, for example, CLECs are already paying a premium of 30 percent, in much the same way as if you had a 15-amp fuse in your house and you're only using 10 amps of it. And similarly, *in the telecommunications environment, suppliers recommend a minimum of 30 percent higher fusing than the actual drain.*

Consolidated Arbitrations Docket, Tr. Vol. 24 at 51-52 (December 15, 1997). Mr. Bissell's testimony is significant for several reasons. Mr. Bissell testified almost five

months after Mr. Grenier's April 29, 1997, testimony referenced by Complainants and clearly negates any suggestion that the parties to the proceeding or the Department had any questions regarding whether Verizon MA's proposed DC power costs would be applied on a fused amp basis. Even more significant was the fact that Mr. Bissell did not offer this observation regarding charges based of fuse amps as a problem to be addressed, but merely as one of a number of reasons it was important for the Department to get its calculation of the per amp power charge right. *See id.* at 52.

Indeed, while parties to the *Consolidated Arbitrations* raised numerous issues regarding Verizon MA's proposed DC power costs, subsequent to Mr. Bissell's testimony in December of 1997, no party to the *Consolidated Arbitrations* (including AT&T) raised the fact that Verizon MA charged CLECs on a fused amp basis as an issue to be addressed by the Department prior to its approval of the DC Power costs in the Departments *Phase 4-G Order.*

FIRST AFFIRMATIVE DEFENSE

Complainants' claims should be dismissed for failure to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Complainants' claims are barred by *laches*.

THIRD AFFIRMATIVE DEFENSE

Complainants' claims are barred by *res judicata* as those claims have already been decided by the Department in prior proceedings.

FOURTH AFFIRMATIVE DEFENSE

Complainants are collaterally estopped from asserting the claims contained in the Complaint because prior Department rulings have already addressed those issues and determined that they are without merit.

FIFTH AFFIRMATIVE DEFENSE

Complainants' claims should be barred by principles of equitable estoppel.

Therefore, for the reasons set forth above, Verizon MA respectfully requests that the Department dismiss AT&T and Covad's Complaint.

Respectfully submitted,

Verizon New England Inc., d/b/a Verizon Massachusetts

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